



RSC Memorandum

Restoring Congressional Article I Authority While Opposing Earmarks

The Democratic Chairs of the House and Senate Appropriations Committees are set to announce in the coming days plans to reinstate the use of earmarks. Advocates of reinstating earmarks, including House Majority Leader Steny Hoyer, [have argued](#) that doing so is necessary to restore Article I Authority to Congress. Yet, as noted by Kimberly Strassel in her recent, [must-read](#) Wall Street Journal piece *Return of the Swamp Creatures*, Congress has functioned for most of its history without earmarks playing a central part, and the rise of their use did not make the institution work better. In fact, quite the opposite was true.

Earmarks are a largely modern phenomenon. They gained a toehold in the 1980s before exploding in the 1990s and early 2000s. In fiscal 2005, Congress included nearly 14,000 earmarks in its spending bills. Far from making Congress work, they undermine its function. Earmarks are the prizes of the most powerful members and the tools leaders and lobbyists use to shut down debate and compel votes.

Capitulating to calls for reinstating earmarks will amplify the power of Appropriations Committee chairs Rep. Rosa DeLauro and Sen. Patrick Leahy, House and Senate Democratic leaders Nancy Pelosi and Chuck Schumer, and well-connected special interests and their K Street cronies. Reinstating earmarks would create a more hierarchal Congress where the representative power of rank-and-file members is diminished, not increased. In the 111th Congress, 61 percent of earmark funding came from the 15 percent of members that sat on the House and Senate Appropriations Committees.

Earmarks also produced wasteful spending. This fact was even recognized by President Barack Obama who stated in 2010, “we can’t afford what are called earmarks.” According to Tom Schatz, President of Citizens Against Government Waste, “Since 1991...there have been 110,605 earmarks costing taxpayers [\\$329.8 billion](#).”

Furthermore, if the Constitution is our main guide for returning this power to Congress, members must also remember the principle of federalism embodied in the 10th Amendment suggests that local projects—over which earmark advocates would prefer funding control—perhaps should not be funded at the federal level at all.

Prudence should also be a factor, not just scope of Congressional power. The Constitution’s 16th Amendment gives Congress the power to tax all of a person’s income if it wanted, yet no member would think that is a prudent action for Congress to take. Likewise, just because the Constitution gives the authority to Congress to earmark, that does not mean it is a prudent tool for it to use.

For these reasons, conservatives have [long](#) recognized that reinstating earmarks is counterproductive to restoring Congress’s Article I powers. Instead, conservatives should advocate



for more effective means not based on a foundation of cronyism and Congressional clout. For years, members of the Republican Study Committee (RSC) have championed many proposals to restore these powers. The implementation of the following policies would, for instance, work to ensure that members of Congress have the tools and information they need to serve their constituents, not the interests of the Swamp.

Budget & Appropriations Process

- Consider each of the 12 regular appropriations bills separately and on time
- Allow Members to offer amendments through open rules on appropriations bills
- Only fund authorized programs
- Convert mandatory spending programs to discretionary ones
- Require greater transparency in how Congressional Budget Office (CBO) cost estimates are calculated (CBO Show Your Work Act)
- Require CBO cost estimates to be available before committee markups
- Require CBO detailed cost estimates for appropriations measures to be made publicly available
- Require a new authorization vote when a bill exceeds its original cost estimate
- Subject all federal government receipts to the appropriations process (Agency Accountability Act)
- Reduce executive spending powers contingent on emergency declarations
- Reduce reprogramming and transfer authorities of the President

Ensuring Administrative Transparency

- Require the Office of Management and Budget (OMB) to Report Unobligated and Reprogrammed Balances
- Require all regulatory actions to be scored and submitted through OMB
- Standardize metrics to define the scope of regulatory actions
- Require full disclosure of data used for all regulatory actions
- Create standardized transparency guidelines for regulatory action
- Require monthly reporting on all regulatory actions (ALERT Act)
- Require plain descriptions of regulations (Providing Accountability Through Transparency Act)

Limit Executive Power

- Impose binding regulatory budgeting guidelines (Article I Regulatory Budgeting Act)
- Require authorizing committees to annually produce legislation constraining regulatory impact costs
- Require Congressional approval for major rules (REINS Act)
- Prohibit Chevron Deference (SOPRA)
- Expand use of the Congressional Review Act (CRA) to include regulatory dark matter (GOOD Act)



- Require regulations to sunset 3 years after implementation (Article I Restoration Act)
- Require congressional review of tariffs and tariff-rate quotas (Global Trade Accountability Act)
- Delay implementation of rules currently under judicial proceedings (REVIEW Act)

Undo Limiting and Distortionary Democrat Party Rules

- Give Congress control over the debt limit (remove automatic suspension by budget resolution)
- Require Dynamic Scoring to accurately assess the economic effects of legislation
- Return to supermajority requirement for increasing income taxes
- Reinstitute GOP's CUTGO rule in lieu of Democrat's PAYGO rule
- Remove carve-outs from PAYGO rules for liberal spending priorities

Finally, members must understand they are not powerless to stop the reinstatement of earmarks. Most legislation, including appropriations measures, is subject to a 60-vote threshold in the Senate. Both House and Senate Republican Conference Rules [prohibit](#) Republican members from requesting an earmark. Naturally, Republicans in both chambers should maintain and use these rules as the foundation for voting against legislation containing earmarks, the outcome being blocking the bicameral passage of earmark-laden bills.